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NOTE AND COMMENT

EFFECT AT THE SITUS REI, OF A DECREE ORDERING CONVEYANCE OF FOREIGN LAND.—In a recent article in this Review, Prof. Willard Barbour discussed the question indicated by the above title. His conclusions may be briefly stated as follows: that such a decree of a competent court having jurisdiction of the person of the defendant creates a personal obligation upon the defendant which a court of equity at the situs should enforce just as it would a contract or trust concerning this land made in the foreign jurisdiction: and that, as between the States of this Union, the "full faith and credit" clause of the Constitution makes such enforcement of the foreign decree obligatory. He conceded that, upon the authorities, these points are still open to debate, but he showed that the tendency of the law, through the course of several centuries, has been obviously in the direction of these conclusions, that the negative authorities are in the nature of a survival in part of doctrines long since abandoned, and that the distinctions upon which the survival rests are without logic or good sense. "Extra-territorial Effect of the Equitable Decree," 17 MICH. L. REV. 527.

A recent decision of the Supreme Court of Iowa gives aid and comfort to Mr. Barbour's thesis. In a suit for divorce in the state of Washington, the court, upon granting divorce, ordered the husband to convey to the wife his land in Iowa. The defendant evaded the process of the court and, in Iowa, conveyed the land to one who had notice of the Washington decree. Upon suit brought in Iowa against the husband and his grantee, the court

set aside the conveyance and ordered the husband to convey to the wife. In both suits, personal jurisdiction of the husband was obtained, and, in the Iowa court, of the grantee also. In both states, the statutes provided for the allocation of the property of parties to a divorce suit. *Matson* v. *Matson,* 173 N. W. 127.

This case clearly proceeds in the main, upon the principles urged by Mr. Barbour, and is inconsistent with what has usually been regarded as the doctrine of *Bullock* v. *Bullock,* 52 N. J. Eq. 561, *Fall* v. *Fall,* 75 Neb. 104, and *Fall v. Eastin,* 215 U. S. 1. But, with what may be considered commendable conservatism, the court avoids criticism of those cases by distinguishing them, upon points which were given more or less emphasis by those courts, but with which Mr. Barbour did not concern himself. It thus pronounces a doctrine somewhat more limited than that advanced by the article in this review, and it seems well worth while to consider the validity of these distinctions and limitations.

Fall v. *Fall* and *Fall* v. *Eastin* are distinguished in that the husband was not served with process in the second suit. But, if the decree in the first suit fixed upon the husband an obligation to convey the land and his grantee took with notice of this obligation, a court of equity acquiring jurisdiction of the grantee should compel him to convey in fulfillment of that obligation, even though it fails to acquire jurisdiction of the husband. Any other position violates the well settled and highly politic principles of equity concerning notice. Probably no one would question this position so far as concerns the obligations of contract or trust. The obligation of the decree falls squarely under the same equitable principles and is not to be distinguished save in a wholly artificial way. It is true that in *Fall* v. *Eastin,* where the court had only to consider the constitutional question, Justice Holmes says that the "full faith and credit" clause does not require any state to apply the doctrines of notice but only to recognize the effect of judgments upon the immediate parties. But, without inquiring whether a merely colorable departure from the rules of notice should be held an effective evasion of the Constitution, it is clear that a violation of sound and settled rules of equity is not condoned by showing that it is not also a violation of the Constitution.

A second distinction raises a more serious question. All three of the cases cited are distinguished in that the statutes of the state where the land lay did not provide for the division of the property of the parties to a divorce suit. To this line of distinction two objections lie. In the first place, it violates the principle that the merits of a foreign judgment or decree, assuming that the court had jurisdiction, cannot be inquired into. See 17 MICH. L. REV. 545, 546. In the second place, even if the merits of the former decree are to be examined, its merits are not impugned by showing that the courts at the situs have no power to make a similar decree. It would seem self evident that the power of a court to impose a personal obligation upon a party depended solely upon the law of its own state—upon the same principle which makes the effect to be given to such obligation in another state depend upon the law of that other state and the United States Constitution. The question here seems to be entirely free from the difficulties which surround the ques-

tion as to what law governs the formation of contracts and trusts of foreign land. Thus, as to the fundamental doctrine of the principal case, that the foreign decree created a personal obligation upon the husband, it seems not to matter at all whether the local court could have made a similar decree. Then the question remains whether the propriety (or duty, under the Constitution) of recognizing and enforcing the obligation of the foreign decree is affected by the existence or non-existence of power in the local court to make a similar decree. The answer, unless we are willing to accept merely arbitrary distinctions, is negative. There is no safer generalization in the field of conflict of laws than this: that all obligations created abroad should be enforced, regardless of whether similar obligations might have been similarly created under the law of the forum, unless in particular cases where their enforcement is contrary to the policy of the forum. That there is no policy opposed to the acceptance of such foreign decrees as we are considering, is demonstrated by Mr. Barbour, who calls attention to the fact that any such policy would be equally violated by acceptance of a deed executed under compulsion of the foreign court—which latter form of indirect acceptance of the foreign decree has never been refused. 17 MICH. L. REV. 549.

It is submitted that the distinctions attempted in the principal case are untenable, and must go the way of the other "diversities," parcel of the conservative doctrine, which are rejected by the court in reaching its decision.

E. N. D.

DETERMINABLE FEE—POSSIBILITY OF REVERTER.—Professor Gray, in the first edition of his great work, "The Rule Against Perpetuities," Section 31 and following, contended that the Statute Quia Emptores by putting an end to tenure between feoffor and feoffee of an estate in fee simple, incidentally put an end to possibility of reverter to the feoffer on failure of the condition in a determinable fee. Specifically he says that upon dissolution of an eleemosynary corporation a terminable gift to such corporation does not revert to the donor, as is said by Lord Coke, Co. LITT. 13b, but escheats. For reversion depends on tenure, and the Statute by destroying tenure ends possibility of reverter. In his third edition, Section 40a, he notes that since the second edition of his book three cases have held *contra,—North* v. *Graham,* 235 Ill. 178, *Pond* v. *Douglass,* 106 Me. 85, and *Board of Chosen Freeholders* v. *Buck,* 779 N. J. Eq. 472. These follow a *dictum* in *First Universalist Society* v. *Boland,* 155 Mass. 171, which he considers as opposed to a case not to be distinguished from it, the leading case of *Brattle Square Church* v. *Grant,* 3 Gray 142. The learned author regards Lord Coke's statement that land of a corporation upon its dissolution reverted to the donor or grantor, while upon the death of a natural person without heirs his land escheated, as based on cases which do not uphold him, and the rule as not surviving his retirement, for *Johnson* v. *Norway,* Winch 37, 1622, shows a great doubt on the part of the judges, and though the report does not give the final decision on the point, Lord Hale's MSS. cited Co. LITT. 13b, Harg. note, say they held the land escheated. Lord Coke seems to have but a *dictum* in one case to support him, and only one case that has ever followed it, GRAY, Section 51.